

WETLANDS COUNCIL

MINUTES

August 14, 2012

The Wetlands Council met on Tuesday, August 14, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, James Kennedy, Deborah Lievens, Russ St. Pierre, Susan Slack, Thomas Sloan and Robert Snelling

Absentees: Councilors: Sharon Champagne and Seth Prescott

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:00 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Henderson made a motion to approve the June 12, 2012 minutes with correction, second by Councilor Kennedy. Motion passed unanimously.***

2. **Public Input:** None

5. **New Business**

a. Wetlands Bureau Report – Collis Adams, Wetlands Bureau Administrator

Budget preparation for 2014/15 has begun. It is to be a maintenance budget with no increases unless those required by contract.

Funding – Wetlands and Shoreland fee accounts are in the black.

Staffing – Environmental Technician position waiver has been granted. Other staff is status quo.

Rulemaking is still in progress on wetlands rules.

Certified Culvert Installer Certification Program is moving forward with UNH/DES. Currently limited to municipalities and DOT with 130 already signed up for the course.

Fee budget challenges and planning were discussed.

SPGP re-issuance is done and was issued last week with no changes.

3. **Status of Appeals**

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

Docket No. 12-07 WtC – Joseph DeVelis

Subject: 6/20/12 Denial on reconsideration of Permit application #2012-00368

Hearing Officer: Not assigned

Status: On July 20, 2012 received Notice of Appeal. July 24, 02123 issued receipt of appeal letter.

Council to accept or decline appeal at its September 11, 2012 meeting.

II. Decisions that need to be written/finalized and issued.

Docket No. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball assigned on January 5, 2011

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Decision and order sent on 7/14/2011. Order Requesting Legal Memorandum was issued on 12/13/11. 1/11/12 rec'd Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. 1/12/12 issued Ruling Granting Motion to Extend Deadline Requesting Legal Memorandum. 4/13/12 received second Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. Presiding Officer to act on Motion. Assented-to Motion to Extend Deadline Requesting Legal Memo was granted for 75 days from May 8, 2012, notice issued on May 10, 2012. July 19, 2012 received 3rd Assented-to Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. July 20, 2012 Assented-to Motion was granted and issued.

III. Hearings or PHCs Pending

Docket No. 08-20 WtC – Anthony Pivero

Subject: 02/19/08 Administrative Order No. 08-007 WD

Presiding Officer: David Conley, Esq. appointed on 11/17/11

Status: Received Motion for Reconsideration on 10/26/11. Received the corrected filing of Motion for Reconsideration on 11/7/11. 4/26/12 received Assented-To Motion to Continue Hearing Date. 5/2/12 Motion was granted. Hearing is rescheduled to August 28, 2012 at 9 a.m., notice sent 5/4/12. July 31, 2012 received DES' Motion to Dismiss. August 3, 2012 Hearing Officer granted Motion to Dismiss and decision was issued.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: Chip Kimball assigned on 10/31/11

Status: Nov 29, 2011 rec'd Motion to Continue Pre-hearing Conference. Motion was Granted and PHC was rescheduled to Dec. 16, 2011 @ 9 a.m. 12/16/11 Notice given by PHO, hearing scheduled for May 22, 2011 @ 9:00 a.m. Also, received on 5/9/12 Motion to Continue Hearing and For Expedited Ruling. 5/10/12 issued Ruling on Motion to Continue which was granted, hearing now scheduled for Oct. 23, 2012 at 9 a.m. June 25, 2012 received Assented-To Motion for 3rd PHC. Hearing Officer granted Motion and scheduled 3rd PHC for Oct. 2, 2012 @ 9 a.m., notice given June 29, 2012.

Docket No. 10-29 WtC – Constance Klefos Trust

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: David Conley, Esq. appointed 10/31/11

Status: Appeal Accepted at 10/11/11 meeting. 10/27/11 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection and Answer to the Motion to Summarily Dismiss. Order on Motion to Summarily Dismiss was issued on 12/9/11 and mailed on 12/13/11. PHC scheduled for Jan. 18, 2012. Hearing scheduled for June 26, 2012 @ 9 a.m., notice given per PHO issued on 1/18/12. June 25, 2012 received Motion to Continue Hearing which was granted on June 25, 2012. June 26, 2012 received Assented-To Motion to Withdraw Appeal; Motion was granted and notice issued on June 26, 2012. This docket is now closed.

Docket No. 10-30 WtC – Dana Belletete

Subject: 08/27/10 Administrative Order No. 10-026 WD

Presiding Officer: David Conley, Esq. appointed on 12/19/11

Status: Council accepted appeal on 12/13/11, notice sent on 12/16/11. PHC was held on Feb. 15, 2012. Appearance for Linda Magoon was filed on 2/13/12. Hearing scheduled for July 10, 2012 at 9 a.m., notice given per PHO on 2/15/12. June 21, 2012 received Assented-To Motion to Continue. June 25, 2012 Hearing Officer granted Motion to Continue and issued.

Docket No. 10-31 WtC – Larry Crocker

Subject: 10/24/10 Denial of Reconsideration regarding a permit issued to Christopher Hemingway, File #2009-03021

Presiding Officer: David Conley, Esq. appointed on May 30, 2012

Action: Council found appeal had been timely filed at its March 13, 2012 meeting. On 3/14/12 sent insufficient appeal letter. 4/2/12 received revised petition for appeal and sent receipt of revised petition. 4/6/12 Mary Ann Tilton filed an appearance on behalf of DES. Council accepted the appeal at its May 8, 2012 meeting. 5/9/12 issued appeal accepted letter. June 4, 2012 issued Notice of PHC which is scheduled for 6/20/12 at 11 a.m. PHC was held on June 20, 2012 and a hearing has been scheduled for November 27, 2012 @ 9 a.m. notice given per PHO on June 20, 2012. June 25, 2012 received Motion to Intervene and an Appearance of Attorney Brad Wilder for the applicant/permittee. June 26, 2012 Hearing Officer granted Motion to Intervene and issued it on the same day. July 31, 2012 received Request for 2nd PHC from Appellant. August 10, 2012 issued ruling on Request for 2nd PHC which was denied.

Docket No. 11-02 WtC – Kathryn Wolf

Subject: 01/24/11 Decision on Reconsideration of File #2004-02929 (granting amended wetland application for Norman Davis)

Presiding Officer: David Conley, Esq. appointed on 12/19/11

Status: On 11/30/11, received a revised Petition for Appeal. On 12/7/11, sent receipt of revised appeal. Council accepted appeal on 12/13/11. 1/12/12 changed name of appeal to correctly reflect appellant's name. PHC held Feb. 15, 2012. Hearing scheduled for July 24, 2012 at 9 a.m., notice given per PHO on 2/15/12. July 17, 2012 received appellant's Witness and Exhibit List and Proposed Stipulation of Facts. July 23, 2012 received Appearance from Mary Ann Tilton for DES and also received Assented-To Motion to Continue. July 23, 2012 Assented-To Motion was granted and issued.

Docket No. 11-03 WtC – Joseph and Patricia DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie assigned on May 2, 2011

Status: Rulings on Motion to Extend Time and Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. Hearing was set for March 13, 2012 @ 9 a.m. 12/27/11 Received DES' and Appellant's Witness and Exhibit Lists. 3/9/12 Motion was granted and notice sent. Hearing scheduled for March 13 was continued. Councilor Crosbie spoke with Atty. English regarding Motion to Modify Hearing Date. It was decided to wait on this. Hearing has been rescheduled to October 9, 2012 at 10 a.m., notice issued May 3, 2012.

Docket No. 11-06 WtC – John and Sharon Graham

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: David Conley, Esq. appointed on 1/19/12.

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. 2nd PHC held Feb. 15, 2012. Hearing scheduled for April 10, 2012 at 10 a.m. 2nd Notice given per PHO on 2/15/12. On April 2, 2012 received Motion to Adjourn or Continue PHC and Hearing on the Merits. 4/4/12 Ruling on Motion to Continue was granted and issued. Hearing has been rescheduled to September 11, 2012 at 10 a.m., notice issued May 3, 2012.

Docket No. 11-12 WtC – George R. and Denise Scholl

Subject: 09/22/11 Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: David Conley, Esq. appointed 12/19/11

Action needed: Appeal was filed timely on 10/21/11. Attorney Hanna filed an appearance for the appellant on 10/21/11. Receipt of Appeal letter was issued on 10/21/11. Council accepted appeal on 12/13/11. PHC was held Feb. 15. Hearing scheduled for August 14, 2012 at 10 a.m., notice given per PHO on 2/15/12. 2/24/12 received appellant's request for certified copy of DES' file. July 30, 2012 received DES' Witness and Exhibit List. July 31, 2012 received Appellant's Witness, Expert and Exhibit List. August 6, 2012 received Appearance for Darlene Forst and DES' Objection to the Submittal of new Evidence and Witnesses. August 9, 2012 received Appellant's Response to DES' Objection to Submit New Evidence and Witnesses. August 9, 2012 issued Order on Objection to Submit New Evidence.

Docket No. 11-13 WtC – R. Michael Mayo, et al.

Subject: 10/18/11 Denial of Request for Reconsideration

Presiding Officer: David Conley, Esq. appointed on 1/19/12

Recused: David Thompson

Action needed: Appeal was filed timely on 11/17/11 but was insufficient. Sent insufficient appeal letter on 11/17/11 and received revised Petition for Appeal on 11/23/11. Receipt of revised appeal letter was sent 11/28/11. Appeal accepted at 1/10/12 meeting. PHC scheduled for March 12, 2012 at 9 a.m. 2/28/12 received applicant's copy of notice that appeal had been accepted by the Council, by return mail which states he is temporarily away. 3/6/12 received phone call from applicant regarding appeal. 3/12/12 received appearance from Attorney Regina Nadeau for the applicant. PHC was held on 3/12/12 and hearing is scheduled for Sept. 25, 2012, with notice given per PHO on 3/12/12. 4/19/12 received an appearance for Atty. Maureen Smith and Atty. Rachel Goldwasser for the appellants. 5/11/12 received Permittee's Witness and Exhibit List. 5/11/12 also received Appellants' Witness and Exhibit List. 5/15/12 received appearance from Mary Ann Tilton. July 23, 2012 received Appellant's Motion to Stay proceedings. July 30, 2012 received Permittee's Objection to Motion to Stay Proceedings. August 1, 2012 received Permittee's Motion to Strike New Evidence and Argument. August 2, 2012 received Appellants' Objection to Applicant's Request for Findings and Other Relief. August 6, 2012 received Appellants' Objection to Motion to Strike New Evidence. August 9, 2012 issued Order on Applicant's Motion to Strike New Evidence and Argument. August 13, 2012 issued decision on Motion to Stay Proceedings, which was denied.

Docket No. 12-02 WtC – Rene Montplaisir & Barbara Fraser

Subject: 12/30/11 Administrative Order No. 11-037 WD

Presiding Officer: David Conley, Esq. appointed on 3/15/12

Action needed: Appeal filed timely on 1/20/2012, issued receipt of appeal letter. Council accepted appeal on 3/13/12, notice sent 3/14/12. PHC was scheduled for May 2, 2012 at 10:30 a.m., notice issued 3/26/12. 4/10/12 received appearance from Linda Magoon. PHC was held on 5/2/12, a second PHC is scheduled for 8/13/12 at 9 a.m. and a hearing is scheduled for August 28, 2012 at 1 p.m. Notice given per Pre-Hearing Order issued on May 2, 2012. 2nd PHC was held on August 13, 2012; hearing has been rescheduled to 9 a.m. on August 28th.

Docket No. 12-03 WtC – Hixon Realty Trust

Subject: 01/24/12 Denial of Reconsideration regarding a permit issued to Steve McKallagat, File #2011-01061

Presiding Officer: David Conley, Esq. appointed on 5/30/12.

Action: 2/22/12 received Notice of Appeal. 2/22/12 issued insufficient notice of appeal letter. 3/22/12 received addendum to Notice of Appeal. 3/23/12 issued receipt of revised appeal letter. Council accepted appeal at its May 8, 2012 meeting; on May 10, 2012 issued appeal accepted letter. Jun 4, 2012 issued Notice of PHC which is scheduled for June 20, 2012 at 12 p.m. June 11, 2012 received

Request for Continuance from Appellant. Request for Continuance was granted and PHC was rescheduled to July 12, 2012 @ 9 a.m. notice given June 18, 2012. PHC was held on July 12, 2012 and PHO was issued with a scheduled hearing date of December 11, 2012 and a 2nd PHC scheduled for December 3, 2012. July 12, 2012 received Appearance for Darlene Forst.

Docket No. 12-04 WtC – Fillmore Industries, Inc.

Subject: 02/14/12 Administrative Order No. 12-005 WD

Presiding Officer: David Conley, Esq. appointed on 5/30/12.

Action: 3/15/12 received Notice of Appeal. 3/15/12 issued insufficient notice of appeal letter. 3/22/12 received revised Notice of Appeal. 3/27/12 issued receipt to revised appeal letter. Council accepted appeal at its May 8, 2012 meeting, on May 10, 2012 issued appeal accepted letter. June 4, 2012 issued Notice of PHC which is scheduled for June 20, 2012 at 10 a.m. June 14, 2012 received Assented-to Motion to continue PHC. June 15, 2012 received Appearance for Linda Magoon. Hearing Officer granted the Assented-To Motion to Continue and notice was issued June 15, 2012. Rescheduled PHC for September 17, 2012 at 2 p.m. Notice given August 14, 2012.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration plan agreement dated July 1, 2010." John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation. Appeals Clerk will send a status request letter.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball assigned on January 26, 2011

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11 Rec'd Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court.

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: David Conley, Esq. appointed on 12/22/11

Status: Written ruling on Motion to Continue was issued on Nov. 8, 2011. 11/14/11 received Supplement to Appeal. Hearing Notice was issued on 12/9/11. Rescheduled hearing for Feb 14, 2012 @ 9 a.m. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to today June 12, 2012 @ 9 a.m., notice given 1/18/12. Hearing was held June 12. Hearing was continued until a settlement agreement is made or either party requests to resume the hearing. The appellant's attorney will update the Council within 60 days as to the progress (Aug. 11, 2012). Appeals Clerk will send a status request letter.

V. Misc.

4. Old Business -

At the June 15 meeting of Chairmen and Vice Chairmen :

- Changing 21.0 so an option for mediation can be requested by the parties. The mediation will be at the request of the hearing officer if there is a chance of settlement.

- There is general satisfaction with this new process.
- The new rules the councils are combining to be reviewed by NH Bar. There will be a stakeholder meeting for review and it will go to public hearing.
- Discussion held on experts & experts' qualifications that need to be in the records.
- There was also a discussion regarding quorums for some councils.

The Attorney General's office is replacing Lisa English with Patrick Queenan for our council. Vicki Quiram has been named our new DES Assistant Commissioner. We will check Asst. Quiram and Atty. Aueenan to see if they are available to attend our next meeting.

Discussion was held regarding notice requirement for hearings (RSA 482A:10). It was decided to keep the notices as they have been done. Further review and discussion will be held.

Chairman Kimball spoke with Attorneys English and Queenan regarding Supreme Court appeals. It was decided that the council members don't have to keep their copies of appeal documents. Should there be another appeal, a new set of what has to be reviewed will be distributed at that time.

Notification of cancellation of hearings was clarified. It was decided that it is the council members' obligation to check their emails the night before a hearing to verify the hearing is still to be held.

6. Next Meeting –

There is a hearing on August 28, 2012 at 9 a.m. for Rene Montplaisir & Barbara Fraser.
Next regular meeting will be Tuesday, September 11, 2012 beginning at 9 a.m. with hearing at 10 a.m.

7. Adjournment

- ***Councilor Snelling made a motion to adjourn, second by Councilor Crosby. Motion passed unanimously.***

Meeting adjourned at 9:50 p.m.

WETLANDS COUNCIL

HEARING MINUTES

August 14, 2012

The Wetlands Council met for
Docket No. 11-12 WtC – George and Denise Scholl Appeal Hearing
Tuesday, August 14, 2012 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors: Ryan Crosbie Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Sharon Champagne and Seth Prescott

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 10 a.m.

The Hearing concluded at 3:40 p.m.